Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

Case No. 88-1452

IN THE SUPREME COURT

OF THE

UNITED STATES

October 1988 Term

RODNEY F. STICH,
Petitioner,
v.
UNITED STATES BANKRUPTCY COURT,
JUDGE EDWARD JELLEN,
CHARLES DUCK, TRUSTEE,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

OPPOSITION OF RESPONDENT, CHARLES DUCK, TRUSTEE TO PETITION FOR WRIT OF CERTIORARI

GOLDBERG, STINNETT & MACDONALD
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34pp

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I

STATEMENT OF THE CASE[1]

Rodney F. Stich, the petitioner herein (hereinafter "Stich") filed a chapter 13 petition for relief in the United States Bankruptcy Court for the District of Nevada on May 19, 1987, which case was converted to a chapter 11 case on July 22, 1987 (case number BK-S-87-1376). Western Diablo Investment Co. (hereinafter "Western"), Stich's wholly-owned corporation, filed a petition for relief under chapter 11 of the United States Bankruptcy Code in that same Court on July 28, 1987, (case number BK-S-87-02067). Charles Duck, respondent herein, was appointed the chapter 11 trustee in bankruptcy on October 8, 1987, by Judge Robert Jones in both bankruptcy cases. Subsequently, on December 14, 1987, the aforementioned cases were transferred to the United States Bankruptcy Court for the Northern District of California, Oakland Division, and were both assigned to the Honorable Edward D. Jellen.

Stich has filed numerous briefs seeking to remove the trustee and to reconsider the trustee's appointment. To date, Stich's requests have been denied. Stich has sought review of the denial of his requests at the Bankruptcy Appellant Panel level (which requests have been denied), and he sought review in the Ninth Circuit, all of said requests have been denied, except one: Appeal Number 88-15114.

Despite the fact that Stich has an appeal pending in the Ninth Circuit on the identical issues raised in the within petition, he now seeks this Court's acceptance of his petition for writ of certiorari of a Ninth Circuit order denying his petition for a writ of mandamus to the Bankruptcy Court, request for removal of the trustee, and request for an emergency temporary restraining order (see Appendix, Exhibit No. 1 attached hereto). Said Order denied Stich's requests on the grounds that:

---

[1] The parties to this case appear to be as follows: Petitioner: Rodney F. Stich; and Respondents: 1) The United States Bankruptcy Court, 2) The Honorable Edward D. Jellen, United States Bankruptcy Judge, and 3) Charles Duck, the Chapter 11 Trustee in Bankruptcy (and respondent herein).

> "The Court is aware of several prior attempts by petitioner to disrupt the orderly process of the Bankruptcy Court by filing 'emergency' petitions for relief in this Court. These have been denied. Furthermore, petitioner's appeal from a decision of the Bankruptcy Appellate Panel denying similar requests for relief is currently pending (appeal number 88-15114)." (See Appendix, Document No. 1.) (Emphasis added.)

Said Order also restrains Stich from filing any further petitions for relief in the Ninth Circuit, without leave of the Ninth Circuit, which arise from any action taken by the Bankruptcy Court.

Additionally, Stich has been enjoined by the United States District Court for the Northern District of California from filing any civil actions in any federal court without obtaining leave of the district court in accordance with certain procedures set forth in Judge Samuel Conti's Judgment and Order of Dismissal and Injunction filed on June 6, 1986 (see Appendix, Exhibit No. 2 attached hereto). Stich was also enjoined by Judge Edward D. Jellen, United States Bankruptcy Judge, from filing any actions in any state court without leave of the Bankruptcy Court in accordance with certain procedures set forth in his order dated January 4, 1989, (see Appendix, Exhibit No. 3 attached hereto). In sum, Stich has been restrained from initiating any procedure without leave of one of the aforementioned courts because he is a vexatious litigant.[2]

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[2] Stich has been found in contempt for violating certain court orders, and has been jailed for his contempt of court. However, Stich has never been jailed by Judge Edward D. Jellen, as Stich contends in the within petition at page 8. Judge Jellen has found Stich in contempt of court and has recommended to the district court, by withdrawing the reference on this matter, that such contempt be sanctioned with criminal penalties; however, to date the district court has taken no action on this matter.

Stich now seeks this Court's intervention to halt an alleged conspiracy which he claims has manifest itself in the injunctions set forth hereinabove, and which allegedly arises from a widespread conspiracy to silence Stich's attempt to expose a federal aviation scandal. In reality, Stich is the subject of the aforementioned injunctions because he continually files frivolous lawsuits against virtually anyone who has any connection to his currently pending dissolution action and/or his bankruptcy case. The roster of his defendants includes a California Supreme Court Justice, and Judges in the United States District Court of the Northern District of California and Eastern District of Nevada, California Court of Appeals, and California Superior Court, in addition to numerous individuals.

II

SUMMARY OF THE ARGUMENT

Stich seeks review of an order denying his request to the Ninth Circuit Court of Appeals to issue a writ of mandamus to the bankruptcy court, remove the trustee and request for an emergency temporary restraining order. He contends that the trustee was originally appointed at a hearing at which he was not given an opportunity to object to the appointment of the trustee. However, Stich fails to mention the occasions that the bankruptcy courts and appellate courts have reconsidered the appropriateness of the trustee's appointment, upon proper notice to Stich, and in each instance it was determined that a trustee was needed. Furthermore, Stich currently has pending in the Ninth Circuit, an appeal from a decision of the Bankruptcy Appellate Panel denying similar relief requested in the within writ. Since Stich has other adequate remedies by which his rights can be vindicated, the Ninth Circuit acted within its discretion to deny the writ of mandamus, and other relief requested.

Additionally, Stich has failed to raise any legitimate basis for granting the review of his petition. He does not satisfy the criteria set forth in Supreme Court Rule 17, or pursuant to Supreme Court Rule 26. Numerous injunctions have been issued which attempt to curtail Stich's litigious conduct, and a chapter 11 trustee was appointed in Stich's chapter 11 bankruptcy case. However,

none of those actions have deprived Stich of his due process rights, and there is no evidence that he is the victim of a widespread government conspiracy to prevent him from exposing an airline scandal.

III

ARGUMENT

A. Background

Prior to filing the within bankruptcy cases, Stich wrote a book in which he claims to have disclosed certain scandalous matters relating to a cover-up by the government of known safety risks to the public in the airline industry. Subsequently, Stich became involved in a contested dissolution proceeding regarding the validity of a "Mexican" divorce that took place approximately twenty (20) years ago. Stich believes that the dissolution proceeding was somehow the product of a widespread government conspiracy to prevent him from exposing the major aviation scandal.

The details of the dissolution proceeding are beyond the scope of the within pleading; however, suffice it to say that during the course of the dissolution proceeding Emma Stich, Stich's putative wife, filed a lis pendens on all of Stich's property. Stich reacted by filing his bankruptcy cases: one in his individual capacity and one for his wholly owned corporation, Western.

Emma Stich filed a motion for relief from the automatic stay and appointment of trustee or examiner with expanded powers. Stich filed an opposition to said motion on September 4, 1987. Said matter was heard by the Honorable Robert Jones on September 11, 1987. The Court did not rule on the merits of the motion to appoint a trustee at that time; however, the stay was modified to allow Emma Stich to proceed with the dissolution proceeding. In addition, the Court stated in its order:

> ... it is (sic) intent of this Court that it should abstain from hearing the above-captioned bankruptcy cases and, therefore, pursuant to 11 U.S.C. §305, an order dismissing

> the cases will be entered within 60 days of the hearing . . . . (see Appendix, Exhibit No. 4).

However, no order dismissing the case was ever entered. On October 8, 1987, Judge Robert Jones entered an order appointing Charles Duck as the chapter 11 trustee in bankruptcy in both of the above-referenced cases. On December 14, 1987, Judge Robert Jones entered an order transferring the venue of both cases to the United States Bankruptcy Court for the Northern District of California, Oakland Division.

Stich filed a motion for Order vacating the order appointing the trustee, or in the alternative, for an order removing the trustee, which motion was heard on December 14, 1987, in the Nevada Bankruptcy Court. The record reflects that Judge Jones denied Stich's motion; however, no order was actually entered because venue was transferred before Judge Jones signed the proposed written order. On December 15, 1987, Stich filed a motion for reconsideration. The Nevada Bankruptcy Court instructed the trustee's counsel to notify creditors that said motion would be heard by Judge Edward D. Jellen, United States Bankruptcy Judge for the Northern District of California, Oakland Division.

On February 4, 1988, Judge Edward D. Jellen heard Stich's motion for reconsideration of the aforementioned December 14, 1987, Order. Judge Jellen denied Stich's request to vacate the order appointing the trustee or in the alternative to remove the trustee. Stich appealed said Order to the Bankruptcy Appellate Panel, which appeal was dismissed for lack of prosecution on June 2, 1988 (hereinafter "June 2, 1988, Bankruptcy Appellate Panel Order").

Thereafter, on July 25, 1988, Stich filed a Notice of Appeal (Appeal Number 88-15114) regarding the above-referenced June 2, 1988, Bankruptcy Appellate Panel Order. While that appeal was pending, Stich filed, in the Ninth Circuit, a request for an emergency stay of the bankruptcy court proceeding, which request was denied on September 23, 1988. (See, Appendix, Exhibit No. 5.)

On January 17, 1989, Stich filed, with the Ninth Circuit, another emergency motion for removal of the trustee. Said motion was denied on January 31, 1989. (See, Appendix, Exhibit No. 6.) Additionally, the January 31, 1989, Order included a scheduling

order on the underlying appeal of the June 2, 1988, Bankruptcy Appellate Order. Stich's opening brief was due on March 14, 1989. As of March 22, 1989, the docket sheet reflected that Stich had not filed an opening brief. (See, Appendix, Exhibit No. 7.)

B. There are no legal issues presented for this Court to review

There are no legal issues presented for this Court to review. Stich presents four (4) questions. The first question, including subparts, deals with the question of whether or not Stich's due process rights have been violated by the allegedly illegal appointment of the bankruptcy trustee. As set forth herein, Stich has opposed the appointment of a bankruptcy trustee in his chapter 11 bankruptcy case currently pending in the Northern District of California, Oakland Division. There have been at least three (3) hearings in which Stich has sought the removal of the trustee, and Stich has sought appellate review of each of those rulings. In each instance, the Court has determined that Stich's case warranted the appointment of a chapter 11 trustee. Stich has used every legal maneuver imaginable to insure that the Bankruptcy Court has considered, and reconsidered, the necessity of having a trustee appointed in this case. Although Stich contends that the trustee was appointed at a hearing in which Stich was not given an opportunity to defend his position, he fails to inform this Court of the numerous hearings at which the same issues were addressed and at which Stich did have an opportunity to address the Court on the necessity of having a trustee appointed. The mere fact that Stich was unable to persuade the Bankruptcy Court to remove the trustee is not tantamount to depriving Stich of his due process rights.

The second question presented by Stich is whether or not the January 20, 1989, Order of the Ninth Circuit enjoining Stich from seeking review of any order which arises out of Stich's bankruptcy case deprives Stich of his constitutional right to court access. However, Stich is not being deprived of access to the Ninth Circuit. In fact there is pending, currently, an appeal in the Ninth Circuit on virtually the identical issues raised in the within petition. (See, Exhibit Nos. 1 and 6.) Where the facts show that a petitioner is not being denied reasonable access to the courts, it is appropriate to deny mandamus. *King v. Nelson*, 389 F.2d 91 (9th Cir. 1968).

Furthermore, he is merely required to seek leave of court before filing additional briefs so that the court can ascertain whether or not Stich is raising new issues, or whether he is seeking review of issues which have already been determined and which are frivolous attempts to disrupt the orderly process of his bankruptcy case. Such a limitation is not unconstitutional. See, *Franklin v. Murphy*, 745 F.2d 1221, 1232 (9th Cir. 1984).

The other two questions presented by Stich are nonsensical. The third question assumes that there is a judicial "gridlock" which is an attempt to silence Stich's exposure of "a major, tragedy riddled, air disaster and superimposed judicial scandal". The fourth question raised asks how the Supreme Court can refuse to address the grave allegations contained in petitioner's brief. Respondent has no comment on the last two questions presented, since respondent has no evidence of a widespread conspiracy to prevent Stich from exposing any scandal.

C. There are no special or important reasons for granting a review of writ of certiorari

There is no basis for granting a review of writ of certiorari in the within matter. Rule 17 of the Rules of the Supreme Court provide that the Supreme Court's certiorari decisions are discretionary, and are not a matter of right. *Durham v. United States*, 401 U.S. 481 (1971). Stich raises no questions of federal law for this Court to decide. Stich is not seeking the review of a decision which conflicts with authority in another jurisdiction. He has not sought review of a decision which is an extraordinary departure from the usual course of judicial proceedings. Nor has there been a decision rendered which conflicts with a decision of this Court. In sum, Stich has failed to cite even one judicially recognized basis for review. Therefore, there is no basis for granting review of this petition.

Furthermore, Supreme Court Rule 26 and Title 28 of the United States Code, Section 1651(a) provide that the issuance of an extraordinary writ is not a matter of right, but of discretion to be sparingly exercised. The petitioner carries the burden of proving: that the issuance of the writ will be in aid of the appellate jurisdiction of this Court; that exceptional circumstances warrant the exercise of this Court's discretionary powers; and that adequate relief cannot be

had in any other form or from any other court. Supreme Court Rule 26. See also, *Wise v. United States*, 369 F.Supp. 30 (W.D. Ky. 1973). As set forth herein, Stich may obtain adequate relief from the Ninth Circuit since he has an appeal pending on the same issues which he seeks reviewed in the within petition.

IV

CONCLUSION

There is no basis for the Court granting review of the within petition. The petitioner is an appellant in a matter currently pending before the Ninth Circuit in which he seeks review of virtually the same issues that he raises in the within petition. Additionally, petitioner raises no legal issues for this Court to review, nor does he carry his burden of proof of establishing that there are special or important reasons as to why the Court should review the within writ. For the foregoing reasons this Court should deny Stich's petition for writ of certiorari.

DATED: MARCH 23, 1989

GOLDBERG, STINNETT
& MACDONALD
A Professional Corporation
Merle C. Meyers
Tracy Green

By TRACY GREEN
Tracy Green
Attorneys for Respondent,
Charles Duck, Trustee

APPENDIX

MEMORANDUM TO CLERK

I certify that the judges concerned concur in this order and authorize its filing.

CHARLES E. WIGGINS
United States Circuit Judge

FILED JANURARY 20, 1989
ARMS UNIT JANUARY 23, 1989

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODNEY F. STICH, et al.,	)	No. 89-70016
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
U.S. BANKRUPTCY COURT, et al.,	)	ORDER
	)	
Respondents.	)	
	)	

Before: WIGGINS, O'SCANNLAIN, and TROTT, Circuit Judges

Petitioners' petition for a writ of mandamus to the bankruptcy court, request for removal of the trustee, and request for an emergency temporary restraining order are denied.

The court is aware of several prior attempts by petitioner to disrupt the orderly processes of the Bankruptcy Court by filing "emergency" petitions for relief in this court. These have been denied. Furthermore, petitioner's appeal from a decision of the Bankruptcy Appellate Panel denying similar requests for relief is currently pending (appeal no. 88-15114). Accordingly, the Clerk shall refuse to file any further petitions for relief from orders entered or actions taken by the Bankruptcy Court in dockets BK-8-87-123748 or BK-8-87-13758 without prior leave of court. Any

EXHIBIT "1"

such application shall be lodged only, and submitted to the current motion panel for review before filing will be allowed.

MoCal 1/18/89
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EXHIBIT "1"

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:

WILLIAM I. WHITTAKER
Clerk, U.S. District Court
Northern District of California
By PATRICIA BUELL
Deputy Clerk
Date: November 3, 1988

ENTERED IN CIVIL DOCKET JUNE 1, 1986
FILED JUNE 6, 1986

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RODNEY F. STICH, Plaintiff, vs. JUDGE MARILYN PATEL, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA; ROGERS, JOSEPH, O'DONNELL & QUINN; BASIL PLASTIRAS; FRIEDMAN, SLOAN AND ROSS, Defendants.	)	No. C-86-0384 SC JUDGMENT -

In accordance with the order entered by the court herein, it is hereby ordered, adjudged and decreed that:

(1) The present action is dismissed with prejudice; and

EXHIBIT "2"

(2) Plaintiff is hereby enjoined from filing any further civil actions in federal court without obtaining leave of court in accordance with the procedures outlined in the court's order.

Dated: June 6, 1986.

HONORABLE SAMUEL CONTI
United States District Judge

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:

WILLIAM I. WHITTAKER
Clerk, U.S. District Court
Northern District of California
By PATRICIA BUELL
Deputy Clerk
Date: November 3, 1988

FILED JUNE 6, 1986

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RODNEY F. STICH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C-86-0384 SC
	)	
JUDGE MARILYN PATEL,	)	
UNITED STATES DISTRICT	)	
COURT, NORTHERN DISTRICT	)	ORDER OF
OF CALIFORNIA; ROGERS,	)	DISMISSAL AND
JOSEPH, O'DONNELL &	)	INJUNCTION
QUINN; BASIL PLASTIRAS;	)	
FRIEDMAN, SLOAN AND ROSS,	)	
	)	
Defendants.	)	
	)	

Plaintiff brought this action under 42 U.S.C. §1983 against Judge Marilyn Hall Patel and several law firms. Plaintiff alleged that Judge Patel's dismissal of his §1983 claims against certain state appellate court justices was the result of a conspiracy

EXHIBIT "2"

between Judge Patel and the lawyers involved to deprive plaintiff of his constitutional rights.

In a lengthy and largely unintelligible complaint, plaintiff charged, inter alia, that Judge Patel "knowingly violated [the] law, unconstitutionally applying them [sic]," (Complaint, ¶8, p. 9), that she "fabricated and misstated the facts and the law" (Complaint, ¶9, p. 9), and that she "deprived and violated plaintiff's right to federal court jurisdiction, by dismissing plaintiff's complaint against the judicial defendants without allowing plaintiff a hearing on the matter, and without allowing the case to go to discovery and trial." (Complaint, ¶10, p. 9.)

The above allegations related to Judge Patel's dismissal of plaintiff's attempt to "appeal" a state appellate court judgment regarding his marital status via a §1983 suit alleging conspiracy on the part of the state court judges. Elsewhere, plaintiff adverts to alleged misconduct on the part of the Federal Aviation Administration and attempts to implicate not just Judge Patel, but the entire judiciary of this circuit in an alleged conspiracy to deprive him of his constitutional rights. (See Complaint, pp. 24-26.)*/

In an order dated March 25, 1986, this court dismissed plaintiff's complaint with leave to amend to state sufficient facts to satisfy the notice pleading requirements of Fed. R. Civ. P. 8(a)(2). The court stated as follows:

> The court will not here attempt to recreate or individually address each of the confusing and repetitive allegations of plaintiff's 30-page complaint. Distilled to their essence, these allegations all amount to a purported claim that the defendants have either fabricated falsehoods regarding plaintiff or have somehow misused the judicial process in an attempt to deprive plaintiff of

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*/ Plaintiff's Amended Complaint is characterized by the same sort of allegations. At ¶26 of the Amended Complaint, for example, plaintiff alleges as follows: "By misstating the law and the facts the Ninth Circuit courts defused a major aviation and government scandal that was linked by evidence plaintiff provided to hundreds of deaths in several major airline crashes . . . . The Ninth Circuit Court of Appeals received the FAA action as number 75-2300, and promptly used the same tactics plaintiff received from Judge Petal [sic] to improperly dispose of the action."

> his constitutional rights. Upon a careful review of plaintiff's complaint, and giving the allegations therein the most liberal possible construction, the court finds that plaintiff fails to satisfy even the liberal notice pleading requirements of Fed. R. Civ. P. 8(a)(2).
>
> . . . .
>
> Like the allegations involved in the cases cited above, plaintiff's allegations herein, charging that defendants somehow committed a constitutional tort against plaintiff by invoking or applying the Federal Rules of Civil Procedure, or by "fabricating falsehoods" about him which remain totally unidentified, are too vague and generalized for defendants to properly prepare responsive pleadings thereto. Nor is the complaint rendered any more specific by its prolixity. Accordingly, the court finds that plaintiff's complaint must be dismissed with leave to amend to allege particular facts sufficient to support his claims.

On April 25, 1986, plaintiff filed a document captioned "Amended Complaint" which in essence is merely a copy of his original complaint.

In its previous order, this court gave plaintiff the opportunity to amend his complaint to meet the requirements of Fed. R. Civ. P. 8(a)(2). Moreover, it informed him of its intent to dismiss the action with prejudice if he failed to so amend within 30 days of the date of that order. The April 25, 1986 document is not an amendment. Since plaintiff has failed to properly amend, the court finds that this action should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). See *Potter v. McCall*, 433 F.2d 1087, 1088 (9th Cir. 1970); *Franklin v. Murphy*, 745 F.2d 1221, 1226 (9th Cir. 1984).

Furthermore, because plaintiff has overwhelmingly demonstrated that he is a vexatious litigant, both here and in state court, he is hereby enjoined from filing any civil actions in federal court without leave of court. Such leave may be obtained from the general duty judge if that judge finds the claim has merit. In

seeking leave of court, plaintiff must certify that the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court. Upon failure to so certify or upon a false certification, plaintiff may be found in contempt of court and punished accordingly. *Franklin v. Murphy*, supra, 745 F.2d at 1232.

This injunction, of course, applies only to the further initiation of civil actions in federal district court, and has no effect on plaintiffs rights to file appeals from this or any other judgment with the Court of Appeals.

In accordance with the foregoing, it is hereby ordered that:

(1) The present action is dismissed with prejudice; and

(2) Plaintiff is hereby enjoined from filing any further civil actions in federal court without obtaining leave of court in accordance with the procedures outlined above.

Dated: June 6, 1986.

HONORABLE SAMUEL CONTI
United States District Judge

FILED JUNE 6, 1986

UNITED STATES BANKRUPTCY COURT,

NORTHERN DISTRICT OF CALIFORNIA

In re

RODNEY F. STICH, No. 4-87-05974J

Debtor.

_____/

In re

WESTERN DIABLO ENTERPRISES, No. 4-87-05975J

Debtor.

_____/

ROBIL, INC., SUPERIOR HOME LOANS and WILLIAM HENSON,

Moving Party,

vs.

RODNEY FRANK STICH, WESTERN DIABLO ENTERPRISES,

Respondent.

_____/

PERMANENT INJUNCTION

GOOD CAUSE APPEARING as set forth in the Court's Memorandum Re Permanent Injunction of even date herewith; it is

ORDERED, as follows:

Permanent Injunction

EXHIBIT "3"

1. This Court's Order Granting Leave to Withdraw as Counsel, filed May 19, 1988, remains in full force and effect. Accordingly, debtor shall not file or otherwise initiate any applications, motions or other contested matters, adversary proceedings, or reorganization plans in this Court unless this Court has first authorized the debtor to so proceed as provided therein.

2. Debtor shall not file any complaints in any court of record of any State against any party in interest in the above-captioned bankruptcy cases, as set forth in Exhibit A hereto, or any of their respective attorneys of record herein, unless this Court has first authorized the debtor to so proceed.

3. Debtor shall not file any complaints in any United States District Court against any party in interest in the above-captioned bankruptcy cases, as set forth in Exhibit A hereto, or any of their respective attorneys of record herein, unless he is first authorized to so proceed by the United States District Court for the Northern District of California in accordance with the Order of Dismissal and Injunction filed June 6, 1986 in *Stich v. Patel*, No. C-86-0384 SC, a copy of which is annexed hereto as Exhibit B.

4. In the event the debtor wishes authorization pursuant to paragraph 2 hereof, debtor shall submit to this Court (but shall not file or serve) all documents which the debtor proposes to file, together with a proposed order by which the filing is authorized.

5. In the event such authorization is given, debtor shall be responsible for the filing and service of the documents in question. Debtor shall be responsible for the submission of any proposed documents to the Court sufficiently in advance of any deadline or the expiration of any limitations period to provide the Court with adequate opportunity to review the proposed documents before passage of the deadline in question. Any documents submitted less than fifteen (15) days in advance of the applicable deadline shall not be deemed timely for purposes of this subparagraph.

6. This Order shall not be construed to prohibit the debtor from applying for approval of a stipulation or from responding to any adversary proceeding, complaint, motion or application initiated by another person, but shall apply to any cross-complaint,

third party complaint, counterclaim or other new matter which the debtor wishes to assert therein.

7. Moving parties Robil, Inc., Superior Home Loans and William Henson may serve a copy hereof on the debtor, trustee, all persons who have filed a request for special notice herein, all claimants scheduled by the debtor and all persons, not scheduled, who have filed a proof of claim herein.

8. Said moving parties and their sureties are hereby exonerated on the $100 undertaking provided pursuant to paragraph 9 of this Court's Preliminary Injunction issued December 5, 1988. The Clerk of this Court shall refund any sums deposited in connection therewith.

9. Nothing contained herein shall be construed to preclude moving parties from filing or requesting payment of any claims herein including any claims pursuant to Bankruptcy Code 503(b)(3)(D) and 503(b)(4) arising from the prosecution of their motion for an injunction herein.

10. This injunction, and the prohibition contained in the Order mentioned in paragraph 1 hereof, shall remain in effect until both of the above-captioned bankruptcy cases shall have been closed or dismissed pursuant to final order of this Court. Until such time, the Court may, for cause, sua sponte or on application of any party in interest, modify, supplement or enforce this injunction, or any provision hereof.

11. The Court reserves jurisdiction to enforce paragraph 11 of the Court's Preliminary Injunction filed December 5, 1988, and to initiate civil or criminal contempt of court proceedings in respect of debtor's failure to comply therewith.

Dated: January 4, 1989.

HONORABLE EDWARD D. JELLEN
United States Bankruptcy Judge

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ENTERED IN CIVIL DOCKET SEPTEMBER 30, 1987
FILED SEPTEMBER 30, 1987

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE	BK-S-87-1376 Chapter 11
RODNEY F. STICH	
DEBTOR	
IN RE	BK-S-87-2067 Chapter 11
WESTERN DIABLO ENTERPRISES, INC.	ORDER MODIFYING AUTOMATIC STAY
DEBTOR	Date: Sept. 11, 1987 Time: 9:00 a.m.

EXHIBIT "4"

On September 11, 1987 the MOTION FOR RELIEF FROM AUTOMATIC STAY; AND MOTION FOR APPOINTMENT OF TRUSTEE OR EXAMINER WITH EXPANDED POWERS filed by Emma Stich and by Friedman, Sloan & Ross came on for hearing. Also before the Court was the continued hearing on the MOTION FOR RELIEF FROM STAY filed by Robil, Inc.

Present were the Debtors and Joshua M. Landish and Vernon L. Bradley on behalf of the Debtors; Rene Ellen Feinstein and Jeffrey S. Ross on behalf of Emma Stich and Friedman, Sloan & Ross; and Estelle C. Mannis on behalf of Robil, Inc.

Having reviewed the pleading on file herein and heard the arguments of counsel, it is intent of this Court that it should abstain from hearing the above-captioned bankruptcy cases and therefore, pursuant to 11 U.S.C. §305, an order dismissing the cases will be entered within 60 days of the hearing. Pending dismissal of the cases,

IT IS HEREBY ORDERED that the automatic stay is modified as follows:

1. The automatic stay is hereby terminated with respect to all litigation pending by or against the Debtor in all state and federal courts, including the California Court of Appeal.

2. The automatic stay is not terminated with respect the commencement or continuation of any foreclosure against any property of the above-captioned bankruptcy estates.

3. The Debtors shall forthwith do whatever is necessary to achieve refinancing of the secured Notes held by Robil, Inc. and the parties shall appear before the Court for a status hearing on November 10, 1987 at 1:30 a.m.

Dated this 28th day of September, 1987.

HONORABLE R. JONES
United States Bankruptcy Judge

Order prepared by

Rene Ellen Feinstein,
Attorney for Emma Stich and
Friedman, Sloan and Ross

Approved/Disapproved

Joshua M. Landish,
Attorney for Debtors

Approved/Disapproved

Estelle C. Mannis,
Attorney for Debtors

EXHIBIT "4"

MEMORANDUM TO CLERK

I certify that the judges concerned concur in this order and authorize its filing.

EDWARD LEAVY
United States Circuit Judge
FILED SEPTEMBER 23, 1988

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re:	)	No. 88-15114
	)	
WESTERN DIABLO ENTERPRISES, et al.,	)	
	)	
Debtors.	)	
	)	
RODNEY F. STICH, et al.,	)	DC# NV-87-2307-AsMoV
	)	
Appellants,	)	
	)	
vs.	)	
	)	
ROBIL, INC., et al.,	)	ORDER
	)	
Appellees.	)	
	)	

Before: BROWNING, KOZINSKI and LEAVY, Circuit Judges

Appellants' emergency application for a stay of bankruptcy court proceedings is denied.

Appellant apparently has not paid the filing fee or filed a civil appeals docketing statement in this appeal, filed July 25, 1988. Within 14 days of entry of this order appellant shall (1) pay the docket fee and file a proof of such payment in this court, and (2) file a completed civil appeals docketing statement. If appellant

EXHIBIT "5"

fails to comply with this order, the Clerk shall dismiss the appeal without further warning. Ninth Cir. Local R. 42–1.

MoCal 9/20/88

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MEMORANDUM TO CLERK

I certify that the judges concerned concur in this order and authorize its filing.

United States Circuit Judge

FILED JANUARY 31, 1989
ARMS UNIT FEBRUARY 8, 1989

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: WESTERN DIABLO ENTERPRISES, et al., Debtor.	
In re: RODNEY F. STICH, et al., Debtor.	
RODNEY F. STICH, et al., Appellants,	No. 88-15114
vs.	DC# NV-87-2307-AsMoV
ROBIL, INC., et al., Appellees.	ORDER

Before: O'SCANNLAIN and TROTT, Circuit Judges

Appellant once again requests emergency removal of the trustee in bankruptcy and injunctive relief. The request is denied.

This appeal is released from the prebriefing conference program, and the opening brief is now due 42 days from the date of this order. Further briefing shall proceed in accordance with Fed. R. App. R. 31(c).

Appellant shall note that this appeal is from the Bankruptcy Appellate Panel's June 2, 1988 order dismissing an appeal from the

EXHIBIT "6"

Bankruptcy Court for lack of prosecution. The opening brief shall be restricted to issues relating to the propriety of that dismissal only.

MoCal 1/27/89
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8/12/88 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. Attached to N/A is a Supplemental N/A and designation of record. Fee payment due 8/26/88. (lu)

8/12/88 Filed certificate of record on appeal. [88-15114] (lu)

9/12/88 Filed Aplt's emergency mtn for restraining order or injunction to halt order to show cause hearing for criminal contempt. (CIVATT) [88-15114]; served on 9/12/88 [1219974] (db)

9/22/88 Filed Appellant Rodney F. Stich's motion for stay payment of void money order during appeal of order, served on 9/20/88 [1249174] (CIVATT) [88-15114] (dg)

9/22/88 Filed Appellant Rodney F. Stich's motion to stay of all Bankruptcy proceedings, and further relief, served on 9/20/88 [1249190] (CIVATT) [88-15114] (dg)

9/23/88 Filed order (BROWNING, KOZINSKI, LEAVY) Appellant's emergency application for a stay of bankruptcy court proceedings is denied. [1249190-1] Aplt apparently has not paid the filing fee or filed a CADS in this appeal, filed 7/25/88. Within 14 days of entry of this order, aplt shall pay the docket fee and file a proof of such payment in this court and file a completed CADS. If aplt fails to comply with this order, the Clerk shall dismiss the appeal without further warning. Setting response: response to order to pay fees and file CAD is due on for Rodney F. Stich [88-15114] (ck)

9/29/88 Sent Appellant Rodney Stich a Civil Appeals Docketing Statement this date. [88-15114] (ck)

10/6/88 Rodney Stich brought check for $100.00 in to the clerk's office this date but was told he had to pay BAP in Pasadena. [88-15114] (dg)

10/6/88 Received Rodney F. Stich Civil Appeals Docketing Statement, deficient; fee not paid; served on 10/5/88 (CONFATT) [88-15114] [88-15114] (dg)

10/11/88 Received notification from Bankruptcy Appellate Panels of payment of docket fee (date paid: 10/11/88) [88-15114] (lu)

1/17/89 Filed Appellant Rodney F. Stich emergency motion for removal of trustee seizure of assets and liquidation, occurring under illegal, corrupts and unconstitutional actes 28 U.S.C. 12912(a)(1) FRAP 8. [88-15114]; served on 1/8/89 [1552596] (CIVATT) (sm)

1/31/89 Filed order (O'SCANNLAIN and TROTT): Appellant once again requests emergency removal of the trustee in bankruptcy and injunctive relief. The request is denied. This appeal is released from the prebriefing conference program, and the opening brief is now due 42 days from the date of this order. Further briefing shall proceed in accordance with Fed. R. App. P. 31(c). Appellant shall note that his appeal is from the Bankruptcy Appellate Panel's 06/02/88 order dismissing an appeal from the Bankruptcy Court for lack of prosecution. the opening brief shall be restricted to issues relating to the propriety of that dismissal only. [1552596-1] appellants' brief due 3/14/89 for Western Diablo Ent., for Rodney F. Stich; [88-15114] (sm)

PROOF OF SERVICE BY MAIL

I, the undersigned, state that I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this Court, at whose direction the service was made; that I am over the age of eighteen years and not a party to the within action; that my business address is 44 Montgomery Street, Suite 1700, San Francisco, California 94104-4789; that on the date set out below, I served three copies of the attached

OPPOSITION OF RESPONDENT,
CHARLES DUCK, TRUSTEE
TO PETITION FOR WRIT OF CERTIORARI

on each party listed below by placing such copies, enclosed in a sealed envelope with first class postage thereon affixed, in a United States Postal Service mailbox at San Francisco, California, addressed to each party listed below.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California, on this 24th day of March, 1989.

MARIE MEADOWS

Rodney F. Stich
P.O. Box 766
Alamo, CA 94507

Rodney F. Stich
238 Leisure Lane
Reno, Nevada 89502

The Honorable Edward D. Jellen
United States Bankruptcy Judge
United States Bankruptcy Court
13th & Alice Streets
Oakland, CA 94612